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6 Attorneys for Plaintiffs
7 Kos Media and Markos Moulitsas Zúñiga

8 *AND*

9 DELAIR D. ALI, *in pro per*
10027 Sinnott Drive
10 Bethesda, MD 20817
Defendant

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 KOS MEDIA, LLC and
16 MARKOS MOULITSAS ZÚÑIGA,

17 PLAINTIFFS,

18 VS.

19 RESEARCH 2000 AND DELAIR D. ALI,

20 DEFENDANTS.

Case No.: 3:10-CV-02894 MEJ-

JOINT STATUS REPORT

CMC Hearing Date: June 09, 2011
Time: 10:00 AM
Courtroom: B

Complaint filed: June 30, 2010.

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26 Plaintiffs Kos Media, LLC and MARKOS MOULITSAS ZÚÑIGA (Plaintiffs),
27 and Defendant Delair D. Ali, *in pro per*, respectfully submit this Status Report
28 regarding the parties' prospective settlement.

BACKGROUND

1) The Parties

2 Plaintiff Kos Media LLC (“Kos Media”) is based in Berkeley California. It
3 owns and operates the DailyKos (<http://www.dailykos.com>), the largest progressive
4 community blog in the United States. Markos Moulitsas Zúñiga is the founder,
5 publisher, and sole owner of Kos Media. Defendant Research 2000 is a polling firm
6 based in Olney, Maryland. Delair D. Ali (“Ali”) is the owner and CEO of Research
7 2000.

10 2) The Complaint

11 As part of its role as a news organization, Kos Media commissioned a number
12 of polls from Research 2000, beginning in September 2007. Kos Media and Research
13 2000, through Moulitsas and Ali, entered into a series of agreements through which
14 Kos Media would pay Research 2000 for political polling performed based on certain
15 professional standards, including requirements for the number of individuals surveyed
16 for each poll. Defendants breached their agreement with Kos Media by failing to
17 perform the polls which they were contracted to provide, instead falsifying the data
18 provided to the Kos Media.

19 The Complaint sets forth the following causes of action: 1) Breach of Contract;
20 2) Unfair Business Practices under Cal. Bus. & Prof. Code §§ 17200 et seq.; 3) Breach
21 of Implied Warranty; 4) Intentional Misrepresentation; 5) Negligent
22 Misrepresentation; 6) Constructive Fraud; and 7) Conversion.

24 3) Procedural History

25 Plaintiffs filed suit on June 30, 2011. The Complaint was timely served on
26 Defendants. On behalf of himself, and Research 2000, Ali signed a waiver of service
27 on or about August 05, 2010. In the cover letter returning the waiver of service, Ali’s
28

1 counsel stated that they would file a responsive pleading on or before September 07,
2 2010.

3 The parties made progress toward a settlement, and reached a general
4 understanding before Defendants' responsive pleading was due. Plaintiffs notified the
5 Court of the pending settlement. On September 09, 2010, the deadline for filing a
6 responsive pleading was extended by Court Order and pursuant to stipulation. (Doc.
7 No. 9.) The settlement agreement was signed by the parties.

8 The matter was set for a Case Management Conference for December 02,
9 2010. (*Id.*) The Case Management Conference was continued to January 13, 2011
10 pursuant to stipulation and Court Order. (Doc. No. 11.) On December 21, 2010
11 counsel for Defendants moved to withdraw from the case. (Doc. No. 12.) That
12 Motion was granted on January 06, 2011, leaving Defendants unrepresented by
13 counsel. (Doc. No. 16.) The Case Management Conference was continued to March
14 10, 2011. (Doc. No. 18.)

15 In lieu of the Case Management Conference on March 10, 2011, the Court
16 issued an Order continuing the Case Management Conference to April 28, 2011. (Doc
17 No. 22.) The Court also entered an Order requiring that Research 2000 procure
18 counsel. (Doc. No. 22.) Also on April 28, 2011, the Court ordered the parties to file
19 the instant joint Status Report. (*Id.*)

20
21 **STATUS**

22 Research 2000 failed to procure counsel. Because Research 2000 was not able
23 to procure counsel, the Court entered default as to Research 2000 on May 19, 2011
24 pursuant to Civil Local Rule 3-9(b). (Doc. No. 25.) Plaintiffs have not yet moved for
25 entry of default Judgment due to the Rule against piecemeal judgments. *See* Fed. R.
26 Civ. P. 54(b).

27 With respect to Defendant Delair Ali, he sent a payment of \$9,000 to Plaintiffs'
28 counsel on or about April 12, 2011. Plaintiffs characterize this payment as progress.

1 Mr. Ali sent an additional significant payment on June 1, 2011, and is endeavoring to
2 make further significant payment by June 15, 2011 in an effort to improve compliance
3 with the agreed-upon terms.

4 This Court's last Order, and all previous Court Orders, were timely served on
5 Defendants.

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7 **RECOMMENDATION**

8 In view of these facts, the parties respectfully submit that the Case Management
9 Conference be continued for 30 days to allow time for the above described payment of
10 June 1, 2011, to clear and to allow time for Plaintiff to make additional payments. If
11 the payment does not clear, or if a substantial payment is not made within 30 days in
12 addition to the above described payment, Plaintiffs shall move for entry of default as
13 to Ali.

14 Date: _____, 2011

15 *signed copy attached as Exhibit A.

16

17 By:

18 Delair Ali, *in pro per*
10027 Sinnott Drive
19 Bethesda, MD 20817

20 Date: May 23, 2011

21 COZEN O'CONNOR

22 By: -/S/-

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